

**RULES**

AND

**ORDERS**

FOR THE COURT

*Of Common*

**PLEAS**

*At Westminster.*

Made and published by the

Judges of the said Court, in the

Term of *S. Michael*, in the year

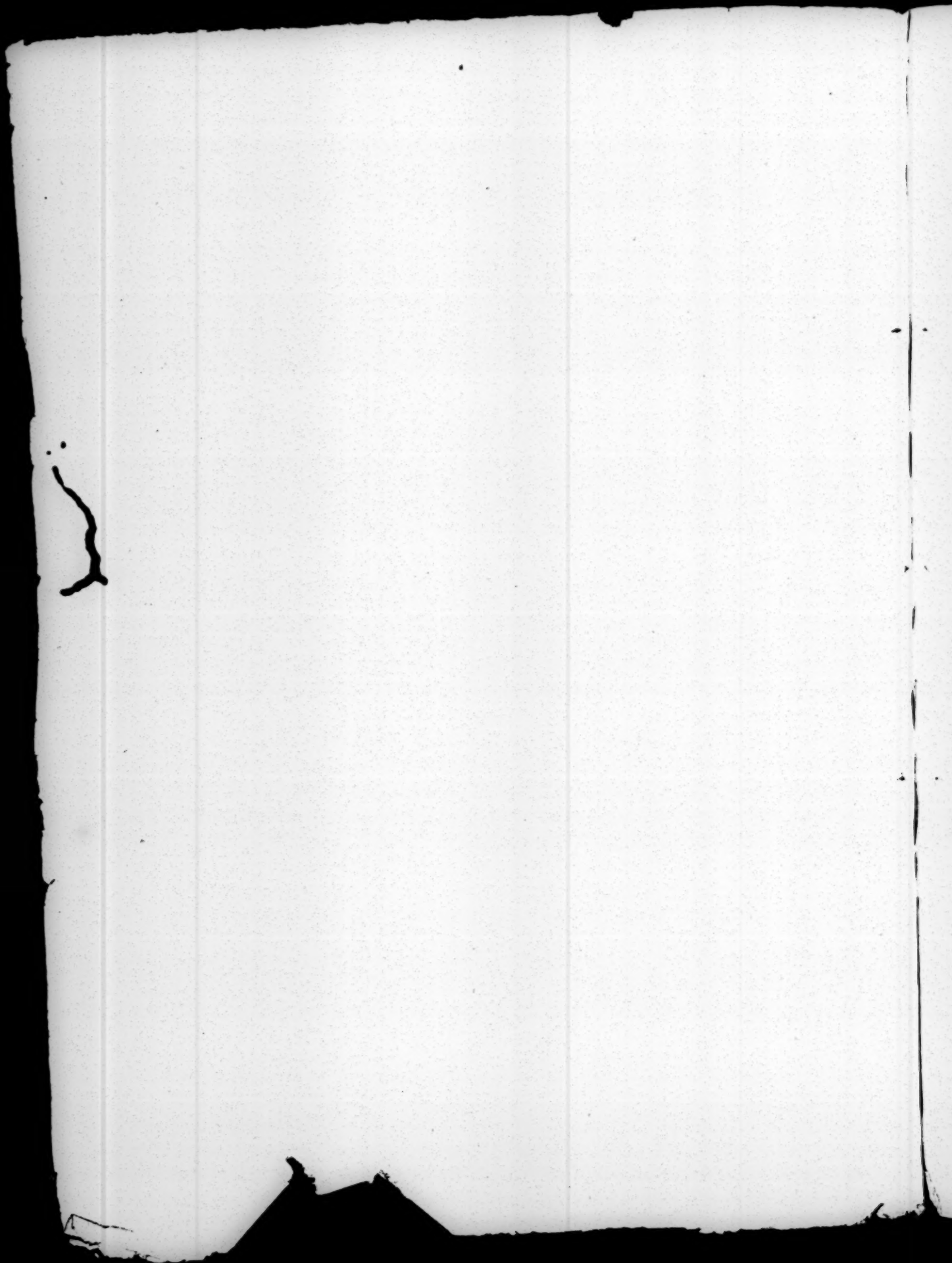
One thousand six hundred  
fifty four.

---

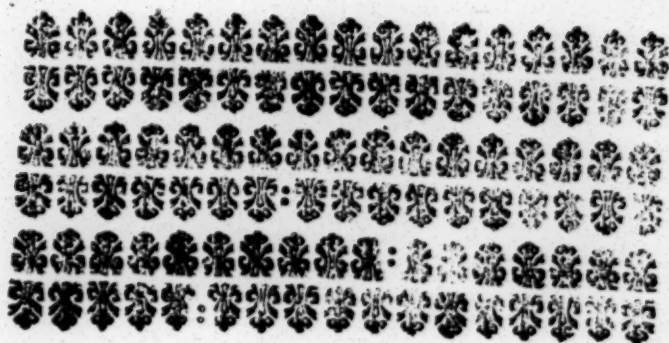
*LONDON,*

Printed for *Richard Marriot*, and are to be  
sold at his shop in *St. Dunstons Church-*  
*yard Fleetstreet, 1654.*





(1)



RULES and ORDERS

FOR THE

*Common Bench,*

Of the Term of *S. Michael,*

In the year, 1654.

---

1. **F**Or the reducing of Attorneis, and Officers, to their due attendance.

2. For the reformation of abuses of Sheriffs, and Bailiffs.

B 4

3. For

2 *Rules and Orders*

3. *For discovery, and punishment of abuses in generall.*

4. *For the constant preservation of Order in the Court.*

5. *For settling a constant course of practice, pleadings & proceedings, especially where there hath been variety of opinion, or practice.*



*Concerning Attornies and Officers.*



Hat all Officers, and Attornies of the Court, be admitted of some Innes of Court, or Chancery, by the beginning of *Hillarie* Term next, or in the



*for the Common Bench.* 3

the same Term wherein they are admitted Officers or Attornies; and be in Commons one week in every Term, and take Chambers there, or in case that cannot be conveniently, yet to take chambers, or dwellings in some convenient place, and leave notice with the Butler where their chambers or habitations are; under pain of being put out of the Roll of Attornies.

2. That all Officers, and Attornies of this Court, appeare in person in this Court, upon, or before the fourteenth day of *Michaelmas* Terme, and upon or before the seventh day of every other Term, upon pain of ten shillings for the first default, twenty shillings for the second default, and putting out of the Roll for the third default. The apparance to be entred with the Clerk of the Warrants, and the defaulters to be delivered to the Court upon oath (if required) within three daies after the time required for apparance.

3. That every Sheriffe have his Deputy in Court to returne and receive Writs, and that each Deputy yearly before *Hillarie* Terme have his name and

C

the

## 4 *Rules and Orders*

the place of his residence in *London* or *Westminster*, set and continued up in Tables, in the Office of Clerk of the Warrants.

4. That the Clerks of Assize, their Deputies, or Assistants, do personally appear with their *Postes* on the first day of *Easter*, and *Michaelmas* Term; and the Deputy Sheriffs, and all other Officers of the Court doe personally appear by the Effoyn day of every second return of every Term; And continue there during the residue of the term without some just cause to the contrary allowed by the Court.

5. That for the future, Common Solicitors be not admitted to practice in this Court unlesse they are admitted Attorneies of either Bench; provided that it extend not to the managing of evidence at a Tryal, nor to Private Sollicitors, or servants of Corporations, or other persons in the cases of their Masters.

6. That none be admitted an Attorney of this Court for the time to come, unless he hath practised as a Common Solicitor in this Court by the space of five years now last past; or hath served, or shall

*for the Common Bench.* 5

shall have served by the space of five years as a Clerk to some Judge, Sergeant at Law, practising Councillor, Attorney, Clerk or Officer of one of the Courts at *Westminster*, unlesse his Master die or give over his practice, and be also upon examination found of good ability and honesty for such imployment; and that sufficient proof (to be put into writing) be made of such service to the prothonotary upon a desire of Admittance, and filed with the Clerk of the Warrants without Fee.

7. That no person practise in anothers name, nor that any Attorney knowingly permit another to practise in his name, upon pain of being put out of the Roll, excepting in warrants of Attorney for common recoveries.

8. That Attornies dismissed by one Court from their practice for misdemeanour, be not (after certificate) admitted to practise in another Court, It being contrary to the intent of the Law.

9. That no under Seriffe or Bayliffe of Sheriffs or Liberties be admitted during such their employment to practise as Attornies, under pain of expulsion

C 2 from



## 6 *Rules and Orders*

from the employment of an Attorney, and not to be readmitted.

10. That such Attorneys as have not been attending their employment in this Court by the space of one year last past, unlesse hindred by sicknesse, be not allowed their priviledge of Attorneys.

11. That for the prevention of maintenance and brocage, no Attorney be Lessee in an Ejectment, nor Bayle for a Defendant in this Court in any Action.



### *Concerning Sheriffs and Bayliffs.*

**T**Hat for the prevention and remedy of delaies and abuses in Sheriffes, Under-Seriffs, Bayliffs of liberties and their Deputies, and other Bayliffs of Sheriffs, &c. in execution of Proceffe and Writs, if it shall appear that  
any



*for the Common Bench.* 7

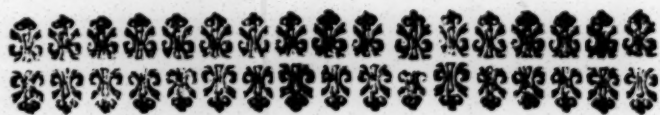
any such Officer shall willfully delay the execution or return of any Proceſſe or Execution, or ſhall take or require any undue Fees for the ſame, or ſhall give notice to the Defendant, thereby to fruſtrate the Execution of any Proceſſe or Writ, or having leavied money, ſhall detain it in their hands after the time of the return of their Writs, beſides the ordinary couſe of Amerciaments (the contempt or miſdemour appearing) an Attachment, Information, Commitment, or Fine to be, as the Caſe requireth. And this as well in the Caſe of a late Sheriffe, or perſon before mentioned, as of them at preſent in Office.

And whereas Sheriffs have taken immoderate and exceſſive Fees for Execution of Writs of Poſſeſſion, or reſtitution of poſſeſſion, contrary to Law; It is declared that ſuch immoderate Fees ought not to be taken; and in caſe ſuch ſhall be taken, the Court to proceed to puniſh the ſame according to Law, upon complaint thereof made.

C 3

That

That to reform abuses by blank Warrants granted by Sheriffs, whereby persons are arrested, and driven to extorted Compositions for their liberties without proceſſe of Law; that no Warrants be granted out to any Officer to arrest or attach any person before a Writ first come to the Sheriff.



*Concerning the Reformation  
and punishment of abuses in  
generall.*

**O**Rdered, That a Jury of able and credible Officers, Clerks, and Attorneys, once in three years be impannelled, and sworn to enquire,

1. Of the points usually inquirable by the Writ, *viz.* falsities, contempts, misprisions and offences.

2. Of such who have been admitted  
Attorniss

*for the Common Bench. 9*

Attorneies or Clerks, and are notoriously unfit, their names to be presented to the Court, and they to be punished or removed, as the case shall require.

Of new or exacted Fees, and of those that have taken them, under whatsoever pretence, and to prepare and present a Table of the due and just *Fees*, that the same may be fixed and continue in every Office; and likewise for the *Fleet*.

And that some persons be Injoynd and sworn to give evidence, *viz*: some Clerks of the Court, and some Attornies in every County, not excluding others.

---

*Concern-*





*Concerning the better preservation of Order among the Officers and Clerks, and observation of breach of Orders and Misdemeanours.*

**T**Hat the Court done once every year in *Michaelmas* Term nominate twelve or more able and credible practisers in the Court to continue for the year ensuing, for these purposes hereafter limited.

That they or any six of them Examine such persons as shall desire to be admitted Attorneies, and appoint convenient times and places for the same : and in order thereunto, that such persons as shall desire to be admitted Attorneys,  
first



*for the Common Bench.* 11

first attend the Prothonotary with his proof of service, then to repaire to the persons appointed to examine Attornies, and being approved, to be presented to the Court with the assignation of his approbation, and then to be sworn in open Court, unlesse some just exception be against him.

That they give information to the Court from time to time, of Breaches of Orders, and miscarriages of Officers, Attorneys, and Clerks.



*That a settled course of practice and proceedings be settled, especially in those Cases where there hath*  
*D                      been*

*been uncertainty, and that the inconveniences in pro-  
cesse, proceedings, and plea-  
dings may be regulated un-  
to a due course. In Order  
whereunto these severall  
things are Ordered and di-  
rected according to the me-  
thod of Proceedings.*



*1. Concerning the Enttring of  
Records and the persons  
by whom.*

**T**Hat no Rolls be delivered to be  
entred, but onely to Clerks, or  
such Attorneys as have entred  
for the space of four years last past, for  
themselves.

That

*for the Common Bench. 13*

That a Table be set up of the Names of the Officers and Clerks that are to be admitted unto the Rolls in the Treasury : and that such and no others be admitted thereunto, and that they may resort there as well for their Occasions, as for their Learning and Instruction, during the Term, and also twice in every week from a month after the Term, and that every such Clerk duly attend as well the Prothonotaries Office in the Term time as for the Entering of Judgments upon Summons given by the Prothonotarie respectively.



*For the prevention of the undue issuing of Judicall Writs: and falsifying of Records. It is Ordered,*

**T**Hat all Executions, and all other Writs issuing out of the Prothonotaries



## 14 *Rules and Orders*

ries Offices be duly signed by the respective Prothonotaries before the same be sealed, and that no exemplification of any common Recovery or other Record which ought to be examined and signed by the Prothonotary, be sealed before the same have been signed by the Prothonotary. Nor that any exemplification (excepting exemplifications of Fines and common Recoveries of the present or next precedent Term) be sealed before they be first signed and examined by the Clerk of the Treasury.

And because the intermedling and dealing of Clerks in more than one Prothonotaries Office at one time, hath been an occasion of disorder and uncertainty in proceedings: It is likewise Ordered, that every Prothonotaries Clerke doe apply himself from henceforth to one Prothonotaries Office onely, and doe give his attendance and make his Entries in that Prothonotaries Office.





2. *Concerning Rolls and Records, and their Entries and Bringing in.*

**T**hat the whole proceedings of any Cause after Apparance be carryed on in the Office of that Prothonotary where it was first entred, or declaration delivered.

That no Rolls be carryed into the Country, under pain that the Offender be excluded from Entering any more Rolls afterwards as a Clerk.

That the Common Rolls of every Term, except *Easter*, be brought in to the Prothonotary fairly entred, and docketted at least ten dayes before the Essoine day of the succeeding Term, under pain of ten shillings for every Roll wanting.

And that no Rolls be delivered to such person after any such offence the se-

## 16 *Rules and Orders*

cond time, without speciall Order.

That the respective Prothonotaries before the third day of the then next Term, doe give in the Names of the Defaulters and Defaults unto the Court in writing.

That the Rolls brought into the Prothonotary be delivered over to the Clerk of the Warrants the day before the Essoine day of the ensuing Term, together with a Note of the Rolls that are wanting, the same Note to bee subscribed by the Clerk of the Warrants, and redelivered to the Prothonotary.

That the Clerk of the Warrants within five dayes after Receipt of the Rolls from the Prothonotary, to deliver over the Common Rolls to the Clerk of the Essoines, taking the like Note from the Clerk of the Essoines of the Rolls wanting.

That the Clerk of the Essoines binde up the Rolls; *viz* : the first part before the appearance day of the second Return, the second part before the Essoine day of the third Return, the third part before the Essoine day of the next Term.

That

*for the Common Bench. 17*

That the Rolls of *Easter Terme* be brought to the Prothonotary on or before the first day of *Trinity Terme*, Delivered to the Clerk of the Warrants within six daies, to the Clerk of the Essoins within five daies after, to be bound up before the Essoine day of *Michaelmas Terme*, each party subscribing the like Notes, and the penalties the same as before.



*Concerning Originall Suits and  
processe, where laid.*

**T**Hat Actions upon the case, trespassse,  
for goods, assault or Imprisonment  
arising in any English County, be laid in  
their



## 18 *Rules and Orders*

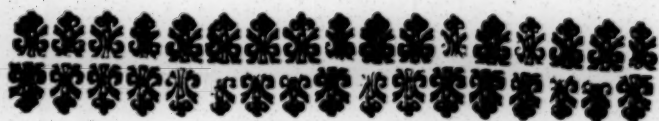
their proper Counties, unlesse they arise where Justices of *Nisi prius* seldome come. And because treipasse or trover for goods, Battery, Imprisonment, and slander must needs be notorious in what County they arise; the Attorney knowingly laying them out of the proper County (unlesse in the Cases before expressed, or for such other Causes as shall be allowed by a Judge of the Court, and duly made appear to be true) be severely punished.

That although the Declaration be delivered seven dayes before the last day of the next precedent Term, or after, yet before plea upon Oath made, the Visne may be changed upon motion, in the said transitory actions, the next Term after: And the Defendant to plead to the new Action as he should have done in the other, without delay.

That the Visne may be charged, (upon Oath) as before, though the Defendant come in by Exigent.

*Con-*





Concerning Processe, and serving thereof.

**T**hat according to the provision of the Statute of the one and thirtieth year of Queen *Elizabeth*, All Attorneys that sue out processe of Exigent be carefull that Writs of Proclamation be delivered, and the Sheriffe doe take care duly to execute the same.

That according to the Statute of the twenty third year of *Henry* the sixth, a prisoner taken upon a *Capias* in processe, be not discharged till he hath given bond to appear, unlesse the Plaintiffe or his Attorney shall consent to take an appearance without Baile. And in such case the warrant of Attorney to appear, to be subscribed or accepted by the Defendants Attorney, and such Warrant not to be revoked, and an Attachment to be  
E granted

granted against the Bailiffe offending herein, or against the Attorney refusing to appear or procur can apparence, having so Subscribed or Accepted.

And forasmuch as divers Sheriffs, Bailiffs of Liberties, and their Bailiffs respectively have of late time contrary to Law, and against former Orders of this Court, discharged persons taken upon Outlaries without *superfedeas*; It is hereby Declared, that such dealing is an abuse; and that all such who have or shall discharge such persons without *superfedeas*, shall be severely punished. And that no Sheriffe, Under-Sheriffe, their Deputies or Bailiffs, may from henceforth discharge or set at Liberty any person or persons arrested upon any *Capias utlagat* untill he receive a *Superfedeas* according to Law from the Officer or Officers thereunto appointed.

Con-



Concerning a Habeas Corpus  
to Sheriffs and Gaolers.

**T**Hat a Habeas Corpus cum Causa  
ad faciendum & recipiendum, di-  
rected to any Sheriffe (other than  
*London* or *Middlesex*) not to be return-  
able *immediatè*, or in the vacation time,  
but at a day certaine in Court in the  
Term.

That such Habeas Corpus to the She-  
riffe of *London* or *Middlesex* may be  
granted in Terme or vacation time re-  
turnable *Immediatè*.

That in case of Habeas Corpus, return-  
able *immediatè*, the Sheriffe ought to  
make his return the same day that the  
Writ is delivered, and to bring the Body  
immediately as is required by the Writ,  
without permitting him to wander a-  
broad by colour or pretence thereof.

E 2

That



## 22 *Rules and Orders*

That where a Writ of *Habeas Corpus* is directed to a Sheriffe, Warden of the Fleet, Marshall or Goaler, the prisoner is to be brought in custody according to the Writ at the day limited, without being permitted to wander abroad in the mean time, upon pretence of such Writ.

That a *Habeas Corpus ad respondendum* may be granted to the Warden of the Fleet, or to the Keeper of an inferiour prison of a Liberty or Franchise, where a *Capias* is returned in Court, *Non est inventus*; such Writ to recite shortly the *Capias*, and to be returnable at a day certain in Court, and to be a good cause of *Detainer*, as well as where a *Capias ad respondendum* comes to a Sheriffe.

That a *Habeas Corpus ad satisfaciendum* may be granted to the Warden of the Fleet, or to such inferiour Goaler returnable in Court, at a day certain, and the Number Roll of the Judgment to be endorsed upon the Writ by the Attorney who sues it out; and such Writs to be a Cause of detainer.

That if upon a *Habeas Corpus* the prisoner be returned charged with proceffe out of the upper Bench or Exchequer,  
and

*for the Common Bench.* 23

and out of the Common Pleas, the Prisoner may be committed with those Causes.

That if upon a *Habeas Corpus cum Cause* the prisoner be returned charged with a procelle out of the Common Bench, though returnable at a day to come, the Prisoner may be committed with his Cause.

That if upon a *Habeas Corpus*, or *Cepi Corpus*, the party be returned in custody andailable, and special Bail requirable, the Bail not to be taken absolutely without consent of the plaintiffe or his Attorney, and if taken *de bene esse*, the prisoner not to be discharged till the Baile be assented unto, or the plaintiff over-ruled in Court to accept the same upon Examination.

That upon every Commitment by a Judge out of Court, the prosecutor of the *Habeas Corpus* is to have one of the Prothonotaries Clerks present at the turning over of the Prisoner, that the Commitment may be duly entred and filed.

*E3*

*Con.*



Concerning Habeas Corpus to  
Inferiour Courts and Proce-  
dendo.

**T**Hat Writs of *Habeas Corpus*, directed to the inferiour Courts of *London, Westminster, Southwark*, and other Courts within five miles of *London*, may be returnable *immediate*. And if the Defendant intendeth to be bailed, then upon, or within four dayes after allowance of the Writ, *Notice* is to be given in writing of the Names and addition of the Baile, the time when, and the Judge before whom the same is intended to be put in, to the Plaintiffe or his Attorney, or him that caused the plaint to be entred; or if none can be found, then notice of the Premisses to be left in writing with the chief Clerk of  
the



*for the Common Bench.* 25

the inferiour Court, or his Deputy by the party that renders the Baile, or his Attorney, and Oath made thereof; otherwise the Baile not to be taken. And a *procedendo* granted if desired, before Bail accepted.

That if no Baile in such cases be put in within eight dayes after the *Habeas Corpus* allowed, in those Courts when it is returnable *immediatè* a *Procedendo* may be granted by any Judge of this Court, if desired before Bail taken.

And if Baile be taken in the absence of the Plaintiffe or his Attorney, the same is to be taken *de bene esse*, and if no exception be taken within twenty dayes after notice given to the Plaintiffe or his Attorney of the names of the Baile, and before whom taken, then upon Oath made of such notice, the Baile to be delivered out to be filed.

That if Baile upon a *Habeas Corpus* be taken before a Judge at his chamber, and not disassented unto, if not filed within four dayes after the twenty dayes, a *procedendo* may be granted upon certificate that it is not filed.

That

## 26 *Rules and Orders*

That in Term time the Plaintiffe in the inferiour Court may speed the Defendant to put in, or to file his Baile by rules given in the Bill of Pleas ; and if not filed according to rules, upon certificate thereof, a *procedendo* to be granted.

That all Writs of *Habeas Corpus* returnable in Court, be returnable at a day certain.

That upon Baile taken of a person in custody, the Judges Clerk to deliver the Bail to the Prothonotary, to be filed, if assented unto ; and to that end the Prothonotaries Fees to be deposited, but the prisoner not to be discharged, untill the Baile be assented unto, or over-ruled in open Court.

---

*Con-*



*Concerning special Baile.*

**T**Hat if the Defendant appear upon the summons, Attachment, or distresse, or by *Superfedi as quia improvidè*, or doth truly render himself upon the exigent, no Baile is require-able.

That in all causes of removall, be it by *Habeas Corpus*, Priviledge, or *Certiorari*, special Baile ought to be given.

That in causes where the Defendant comes in by *Cepi corpus*, be it debt, detinue, trespassse, for goods, Action upon the Case (except slander) if the debt or damages amount to twenty pounds, speciall Baile is to be given, except it be against an Heir, Executor, or Administrator.

That in Covenant because the damages are uncertain, till Declaration, Baile at discretion.

F

That



## 28 *Rules and Orders*

That in battery, conspiracy, false imprisonment, no speciall Baile of course without speciall motion and order.

That in slander no speciall Baile, except in slander of Title, wherein to be left to the discretion of the Judges.

That in priviledge, other then for Fees and disbursements as an Attorney in this Court, Baile at discretion of the Court. In such case where in a suit by a common person, especiall Baile is not requisite.

That if Baile be given upon reversall of an Outlary, or removall by *Habeas Corpus*, the originall to be shewn upon tendring of the Declaration, otherwise the Baile not liable; unlesse the party or his A to ney will voluntarily appear, or take a Declaration, without shewing of it.

That in case of a removall out of an inferiour Court, or reversall, the new originall to agree in the nature of the Action, the summe in demand, and the County, otherwise the Baile not liable; but if the party will voluntarily appear to such varying originall, to be good as to the party: but it upon a Cause removed by  
*Habeas*

*for the Common Bench. 29*

*Habeas Corpus*, out of the Courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield*, or *Poole*, which are Counties where the Judges of *Nisi prius* seldome come, if the Action be transitory, it must be laid in the County of *Kent*, *Southampton*, *York*, *Stafford*, or *Dorset*, where the Town and County lieth, and the recognizance to be taken accordingly.

That the principall rendring himselfe at any time after Baile put in, and before or upon the day of apparance of the *scire facias* returned, *scire feci*, or of the second *scire facias* returned *nihil*, or in case there shall be an Action of debt brought upon the recognizance against the Bail, then if the principall shall render himself, upon or before the processe returned served, no further proceedings to be against the Baile.

---



*Concerning Apparances, and  
Entries thereof.*

**T**Hat Apparances be duly entred with the Prothonotaries or Filizers of this Court respectively, with whom the same ought to be entred: but if speciall Baile be requirable in the Case, the Plaintiffe not to be concluded by such apparances, if he insist upon it.

That where an apparance is upon the originall Writ, if the Defendants apparance be not entred of Record, the Defendants Attorney to give his hand to the Plaintiffs Attorney upon the delivery of the Declaration, that he appeareth thereunto.

That any Attorney of either Bench accepting a Warrant to appear, or subscribing a Proceffe, Declaration, or  
Warrant



*for the Common Bench.* 31

Warrant to appeare, be compelled to cause apparance, or be liable to an Attachment, or put out of the Roll, as the case requires; and the Party not to be received to countermand such apparance after his Reteyder.

That no person without Rule of Court, order of the Judge or Prothonotary; and notice to the adverse party or his Attorney, change or shift his Attorney; and such Attorney newly coming in, to take notice at his perill of the Rules whereunto the former Attorney was liable, had he continued.

That a Reteyder of an Attorney of the Common Pleas, by an Attorney of the Upper Bench, & *à Converso*, be a sufficient excuse to the Attorney so retained, acting according to such reteyder, and the Attorney so retaining without warrant from the Party, to be subject to the punishment.

That if a *Capias* be returned in Court *non est inventus*, against a Prisoner in the Fleet, he is compellable to appear upon a *Habeas Corpus ad respondendum*, as well at the suit of a stranger, as at

F 3 his

## 32 *Rules and Orders*

his suit whereupon he is imprisoned, and to answer to a Declaration according to the rule of the Court, or that Judgment be entred against him.

That he that reverseth an Outlary have an Attorney of Record present, who must undertake an Apparance to a new originall. And such Attorney shall be compelled to appear; and that the Defendant or his Attorney give notice to the Plaintiffe or his Attorney, of such reversal the same Term, or in the vacation next after it.



### *Concerning Imparlances.*

**T**Hat forasmuch as some Inconveniences doe sometimes happen to Plaintiffes, by entring their Declaration in speciall Actions, It is there;

therefore ordered, that the Plaintiffs in such speciall Actions shall have liberty to enter the Imparlanes the Terme following, entring the same of the first Term with an *Incipitur*: as it hath been usuall in *Quare Impedit*: but that all other Imparlanes be duly entred before any Issues, or demurrers, or judgments the coupon be entred.

That if the Defendant appear the first Term, and give no Rules to declare, the Defendants Attorney may the second Term be compelled to accept of a Declaration with Imparlance, and the Declaration may be entred as of that Term, with an Imparlance over to the next Term, or in the first Term with an *Incipitur*, as before, as the Case shall require.

That if the Plaintiffe declare not the second Term, though the Defendant give no Rules, yea a Non suit may be entred at the end of the second Term upon a continuance over by him entred by *dies datas*, but not the third Term, or after.

That upon a meer reall Action, or a bare *clausum fregit*, an Imparlance of Course. But in Dower after view had, if the



## 34 *Rules and Orders*

the day to appear be upon the first Return of any *Hillary* or *Trinity* Term, no Imparlance without consent or rule of Court.

That in Ejectment or any personall Action, If the Apparance be the first Return of *Hillary* or *Trinity* Term, no Imparlance without consent or speciall rule in such Causes, other than in *London* or *Middlesex*. If the apparance be before *Craſtin' Martin'* or *menſe Paſch*. no Imparlance without consent, or special rule. But if upon or after thoſe Returns, no Imparlance of Courſe.

In *London* or *Middlesex*, if the apparance be before *Craſtin' Aſcen*, or before the laſt Return of any other Term, no Imparlance without a ſpecial rule or conſent; but the Defendant to plead as of that Term within fourteen dayes after the end of the Term upon rule given to answer: but if of *Craſtin' Aſcen*, or the laſt return, then an Imparlance of courſe.

*Con-*



*Concerning Rules to Declare  
and Plead.*

**T**hat no Judgment by *nihil dicit* be entred untill there be a Rule to plead, first given in that Prothonotaries Office, where the Cause is entred, and the day by such Rule be past, and that such Rules be only given in the Bills of Pleas, or other remembrances for that purpose, onely to be in the custody of the secondary of the respective Prothonotaries, during the time limited for giving of Rules, to the intent that all persons concerned may have recourse to the said secondary, and to see the same *Gratis*; and that Clerks who usually enter for Attorneys, may give Rules for answer in the said Remembrances in all their own Causes wherein there hath been Imparlances, except in Ejectments, so as they enter the same Rules in the Office without carrying any of the said Re-

G                      mem-

## 36 *Rules and Orders*

membrances out of any of the said Offices ; and that the secondary set down upon the remembrances the day wherein such Rules are given, and that no Rules to declare or answer be given after three dayes exclusive after the end of any Term, and such rule to be out at four dayes inclusive of the day wherein the same is given.

That in all Actions except Replevin (after rules to declare are out, yet) if the Plaintiffe or his known Attorney or Clerk be to be found, a Nonsuit for want of a Declaration not to be entred, unlesse the Plaintiffs Attorney or known Clerk be first called to for a Declaration.

That if the Plaintiffs Attorney or Clerk be called to for a Declaration, and delivers it not to the Defendant or his Attorney sometime during that Term, then the rule being out, the Defendants Attorney may enter a Nonsuit.

That if the Plaintiffs Attorney being called to for a Declaration, cannot afterwards finde the Defendants Attorney or Clerk, to save a Nonsuit he may deliver a Declaration into the Prothonotaries Office where the rule is given.

That



That when a Deed, Will, or Letters of Administration are to be shewn in a Declaration, the Attorney of the Plaintiff delivering a Declaration with a subscription, that the Defendant shall not be compelled to plead till the same be shewn; no Judgement by *Nihil dicit* be entred against the Defendant till the same shewn; Nor any Nonsuit upon the Plaintiff if he shew the same before the end of the next Term.

If the Defendant be committed to prison by Process out of this Court, or *Habeas Corpus*, the prisoner entering his appearance with the Prothonotary in case of a plaint, or in case of attachment of privilege; or with the Filizer in case of other process, and giving rules to declare, the Plaintiff not declaring before the end of the next Term after the commitment, the Defendant in reference thereunto to be discharged of his Imprisonment by *Superfediis* in the end of the next Term, and liberty for the Plaintiff to declare upon that appearance the next Term after that at the furthest.

That if a Writ be returnable 5. *Pasc.* or the last return of any Term, the De-

## 38 *Rules and Orders*

fendant, giving rule, and calling for a Declaration, if it be not delivered according to the former directions, four dayes or more before the Essoine day of the ensuing Term, may enter a Nonsuit, though above sixteen dayes after the preceding Term.

That the Plaintiff having declared and given a Rule for answer, the Defendant is to deliver his Plea in writing to the Plaintiffs Attorney, or known Clerk.

That if there be no such Attorney or Clerk to be found, or being found, refuseth to accept it, then the Plea may be left in the Office to save a Judgment.

That in any Case where a Plea or Declaration is left in the Office, no Nonsuit for want of a Declaration, or Judgment for want of a Plea be Entred.

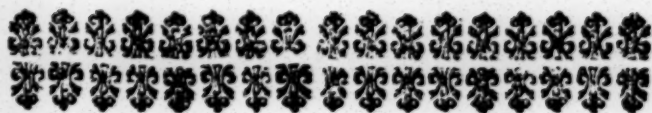
That in Cases of popular Actions, Informations, or reall or mixt actions, except ejectment, no judgment to be entred by default, or *nil dicis*, without motion in Court.

That upon *Nul tiel* Record pleaded, and no difficulty or variance appearing, Judgment be entred after Rule, without motion by the Plaintiff.

That

*for the Common Bench. 39*

That after any Imparlane of three Terms, without any calling for answer, no Judgment to be entred without a Terms notice.



*Concerning Declarations.*

**F**Or avoiding of long and unnecessary repetitions of the Original Writ in Actions upon the Case, and personal Actions upon penall Statutes.

That Declarations in Actions of Trespasse upon any general Statute; namely, Hue and Cry, *Monopolies*, and for suits in the Admiralty, and such like, other than debt, repeat not the Original Writ but only the nature of the action, *viz*: *A. B.* was attached to answer *C. D.* in a Plea of trespasse and contempt, against the form of the Statute.

G 3

For



## 40 Rules and Orders

*For the avoiding of the Common  
Barre and new assignment.*

**T**He Declaration upon an Original, or Bill, *Quare clausum fregit*, may mention the place certainly, and so prevent the use and necessity of the Common Barre and new assignment.

That unnecessary length of Declarations be reformed. And in order thereunto,

That in Actions of Covenant not to repeat more of the deed than is necessary for the assignment of the breach, and not to repeat the Covenant in the conclusions.

That in Actions of Slander, long preambles be forborn, and no more inducement than what is necessary for the maintenance of the record, when it requires a special Inducement or *Colloquium*.

That in Actions upon general Statutes the Declaration not to repeat the Statute, but to conclude against the form of the Statute in such case made and provided : as in case of debt, upon the Statute of the second year of *Edward* the sixth, For Tythes ; the thirty second of *Henry* the

*for the Common Bench. 41*

the eighth, for Maintenance. 28 *Fazobi*  
of Monopolie.

That Actions of Debt upon a Judgment had in the Courts of *Westminster*, to recite onely the Judgement. But if a Judgment had by or against an Executor or Administrators debt, thereupon to repeat a Declaration and Judgment.

That before the Declaration actually entred, the Plaintiffe may amend his Declaration, paying costs, or giving an Imparance, at the Plaintiffs election, by the Order of a Judge of the Court, or Prothonotary: But after it is entred, if the amendment be but a small matter that doth not deface the Roll, yet that before issue or demurrer entred it be amendable by the Court upon costs and liberty to plead, with a new or further Imparance.

*To cause care in the examination of the Declaration.*

**T**HAT if the Plaintiffs Attorney or Clerk deliver a Copie to the Defendants Attorney or Clerk, materially varying from the originall Declaration, the disadvantage thereof not to be cast upon the Defendant, but on the Plaintiff, whose Attorney is paid for it.

*Con-*



*Concerning Pleading.*

**T**He Common Barre and new assignment to be forborn, where the Declaration contains the certainty equivalent to a new assignment.

That pleadings be succinct, without unnecessary repetitions.

That in the pleading of an Outlawry the *mesne* processe be not repeated, but the exigent, and Uclary joyned to the commencing of the suit.

That in pleading a generall Statute, the Statute be not recited, As the Statute of one and twentieth of King *James*, of Limitations.

*Con-*





*Concerning Demurrers.*

**T**Hat according to the statute of the twenty seventh of *Eliz*: upon Demurrers, the Causes be specially assigned, and not involved with generall unapplied expressions of double, negative, pregnant, uncertain, wanting form, and the like, but to shew specially wherein, that the other party may (as the case shall require) either joyn in demurrer, or amend, paying costs; or discontinue his Action.

That it be declared, that matters of form, as well on the part of him that demurres, as of him that joyns in all parts of the pleading, are discharged; unlesse such as are specially assigned upon the Demurrer.

H

Con-



*Concerning Tryalls, and notice  
of Tryalls and Inquiries.*

**T**Hat notice of Trials or Inquiries in *London* or *Middlesex* (the Defendant dwelling within fourty miles of *London*) be eight daies exclusive of the day where notice is given.

That if the Defendant live above forty miles distant from *London*, notice of such Trials and Inquiries in *London* or *Middlesex* be fourteen daies exclusive of the day of notice.

That in all Issues to be tried by *Nisi prius* in *London* or *Middlesex* upon a record of a precedent Term, the copie of the Issue be brought to the Clerk of the Treasury, for the ingrossing of the Record, four daies at the least before the day of Tryal of such Issue, and that all Causes so be tried in *London* or *Middlesex*

*for the Common Bench.* 45

*sex* be entred into the Marshalls Book four daies before the day of triall.

That eight daies notice exclusive be given upon tryals in the Countrey, and upon Writs of enquiry of dammages in Writs of dower and waste, and all other inquiries of dammages.

That if the Plaintiffe give notice of a tryall, and he proceed not, the Plaintiffe not to take it down to tryall again without new notice to be given, as is before expessed, unlesse by consent or Rule of Court.

But in *London* or *Middlesex*, if notice be given of a tryall for one sitting, and the Plaintiffe be not provided to proceed: Then if he give notice before the sitting that he will trie it the next sitting, that to be held convenient notice.

That in case of such warning, and no proceeding, the Defendant upon motion to have his cost of his former attendance, to be taxed by the Prothonotary; unless the Plaintiffe give the Defendant warning in convenient time that he would not proceed; or shew cause to be allowed by the Court in excuse of such Costs.



## 46 *Rules and Orders*

That no Record of *nisi prius* be signed before the Issue be entred upon the Roll.

That if the Plaintiffe give notice for a tryal, and proceed not, the Defendant may take it by *proviso* according to law, giving notice eight or fourteen daies, as the Case requirerh, as aforesaid.

That in *London* or *Middlesex*, if no warning for a Tryall, then the Defendant not to take it by *proviso*, to trie it the same Term; but afterwards he may take it by *proviso* according to Law, giving eight or fourteen daies notice as the Case requires.

That if notice be given to the Attorney of the adverse party of a tryall upon an issue joyned, it be taken to be good notice: And oath made of want of notice to the Attorney, to turn the proof of notice given to the party upon him that brought it down to triall in that case.

That if an issue be joyned above a year past in any case, then one Terms notice to be given of the tryall.

*Con-*



*Concerning Tryalls at Barre.*

**T**Hat for the remedy of excessive charges of tryalls at the Barre, especially whilest the Jury lyeth out, it is Ordered that a Jury lying out one night after a privy verdict delivered, there be allowed for the whole dyet of each Jury man that night no more then three shillings four pence a piece, and for two Cryers to each of them no more than two shillings ordinary, besides the charge of the Jurors Lodging.

That after a verdict delivered in Court, the Jury and Officers to be paid their charges and fees in the Inner treasury, without going to the Taverns or Victualling-houses for that cause.



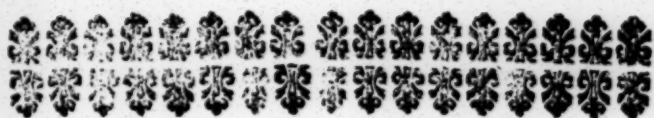
*Concerning special verdicts at  
the Barre, or by Nisi prius.*

**T**Hat in finding special Verdicts where the Points are single and not complicated, and no special conclusion, the Councell (if required) doe subscribe the Points in question, and agree to amend omissions or mistakes in the *mesne* Conveyance, according to the truth, to bring the point in question to Judgment.

That unnecessary finding of deeds in *hac verba*, where the question rests not upon them, but are onely derivation of title, to be spared; and found shortly, according to the substance they bear in reference to the Deed, as Feoffment, Lease, Grant, &c.

*Con-*





*Concerning new Trials.*

**T**Hat where a Verdict findes entire damages where damages are the principal, and part not actionable, though judgment be arrested, yet by rule of Court a *venire fac' de novo* may issue as upon an ill verdict, and upon the new tryall the party may sever his damages.

---

Con-



### *Concerning Judgment.*

**T**Hat in a Judgment by *non sum informatus*, or *nihil dicit*, in *Ejset firme*, the *Capiatur* be entred upon the first Judgment.

That upon a cause removed by *Habeas Corpus* out of an Inferiour Court, having Jurisdiction of the Cause, if Judgment be given for the Plaintiffe, the costs below to be considered and cast into the Judgment; if for the Defendant, the charge of putting in Baile.

That the principall in any Bond or Bill obligatory do not for the time to come give warrant to appear for, or confesse judgment against his surety: and that after the two & twentieth of *January* next, no Judgment be confessed for, or given against the surety upon any such warrant given by the principall.

That

*for the Common Bench.* 51

That sixteen dayes be allowed for the signing of Judgments after every Term, except *Easter* Term, upon Causes depending in the Term precedent.

And lastly, it is declared by the Justices of this Court, that as the Court doth expect that all the Rules and Orders before mentioned be duly observed; so it is further Ordered, that all other former Orders and Rules yet in force, not hereby altered, suspended, or adnulled, be likewise Observed and put in Execution according to the true intent and meaning of the same.

OL. ST. JOHN. } MATTHEW HALE.  
EDW. ATKINS. } HUGH WINDHAM.

---

*FINIS.*

---

I.



1  
9

n  
i  
n  
d  
k  
C  
b



*The OATH to be taken by  
every Attorney of the Court of Common  
Bench at Westm' before his admittance,  
to be administred openly in Court, by the  
chief Prothonotary.*

**Y**OU shall doe no fals-  
hood or deceit, nor con-  
sent to any to be done with-  
in this Court: And if you  
shall know of any to be  
done, you shall give know-  
ledge thereof to the Lord  
Chief Justice, or other his  
brethren, Justices of this  
I 2 place,

(54)

place, that it may be reformed. You shall delay no man for lucre or malice. You shall increase no Fees, but you shall be contented with the old Fees accustomed. You shall plead no forreign Pleas, nor sue any forreign Suits unlawfully, to the hurt of any man; but such as shall stand with the Order of law, and your own conscience. You shall seale all such pro-  
cesse as you sue out of this Court, with the seal thereof: and see the Fees paid for the same. You shall not wittingly nor willingly sue, or procure



(55)

cure to be sued any false suit,  
nor give aid or consent to  
the same, upon pain to be ex-  
pulsed from this Court for  
ever. And further, You shall  
truly use and demean your  
self in the office of an Attor-  
ney within this Court, ac-  
cording to your learning and  
discretion.

*So help you God.*

---

---